

APR 22, 2014

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOE FELDER, #02-A-0644

Plaintiff,

-vs-

**ADAM STECK
MATTEW RADEMACHER,**

Defendants.

**STIPULATION OF
SETTLEMENT AND
DISMISSAL PURSUANT
TO FEDERAL RULES OF
PROCEDURE
41(a)(1)(A)(ii)**

10-CV-578-HKS

WHEREAS, the parties hereto have agreed to settle this action pursuant to the provisions of Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure; and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the above-entitled action and the same hereby is dismissed on the merits, with prejudice, without costs to either party as against the other; and

WHEREAS, the Department of Corrections and Community Supervision, as the Department having supervision of defendants Adam Steck and Matthew Rademacher, alleged to have caused the injuries herein, has approved the settlement of this action under the terms and conditions set forth below; and

WHEREAS, defendants Adam Steck and Matthew Rademacher, do not admit any wrongdoing but approve this settlement for the convenience of all interested parties; and

WHEREAS, the parties hereto have entered into this Stipulation of Settlement and Dismissal, in connection with the settlement of this action; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all of the parties in the above-entitled action as follows:

1. The parties hereby agree that the above-captioned action is dismissed and discontinued with prejudice, pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

2. Any and all claims for damages by plaintiff Joe Felder that are the subject of this action, or that otherwise arise out of any of the incidents alleged in plaintiff's Complaint, are hereby settled for the sum of \$9,000 (nine thousand dollars), payable to plaintiff Joe Felder, in full satisfaction of all claims for damages.

3. The above payment of \$9,000 (nine thousand dollars) recited in paragraph 2 above shall be drawn to the order of Joe Felder and mailed to him at his current facility: Joe Felder, Din No. 02-A-0644, Sullivan Correctional Facility, 325 Riverside Drive, P.O. Box 116, Fallsburg, New York, 12733-0116. The entire amount of \$9,000 (nine thousand dollars) shall be deposited in plaintiff Joe Felder's facility/departmental account.

4. Defendants Adam Steck and Matthew Rademacher further agree to pay to plaintiff's counsel, Hurwitz & Fine, P.C., the sum of \$4,000 (four thousand dollars), for all costs, disbursements and legal fees incurred in connection with the prosecution of this action, which shall be drawn to the order of Hurwitz & Fine, P.C. and mailed to 424 Main Street, Suite 1300, Buffalo, New York, 14202.

5. In consideration of the payment to plaintiff of the sum set forth in paragraph 2, plaintiff Joe Felder hereby releases defendants, and any and all current or former employees of the Department of Corrections and Community Supervision, in their individual and official

capacities, and their heirs, executors, administrators and assigns, and the State of New York, and the Department of Corrections and Community Supervision, from any and all claims, liabilities and causes of action arising out of the circumstances set forth in plaintiff's Complaint and all Amended Complaints in the above-entitled action, including, but not limited to, claims relating to or arising out of any alleged violation of plaintiff Joe Felder's constitutional rights, and all other causes of action and claims of liability.

6. In further consideration of the payment of the sum set forth in paragraph 2, plaintiff Joe Felder hereby waives, releases, and forever discharges defendants Adam Steck and Matthew Rademacher, and any and all current or former employees of the Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York, and the Department of Corrections and Community Supervision, from any and all claims, known or unknown, arising out of plaintiff Joe Felder's Medicare eligibility for and receipt of Medicare benefits, and/or arising out of the provision of primary payment (or appropriate reimbursement), including cases of action pursuant to 42 U.S.C. §1395y(b)(3)(A) of the Medicare, Medicaid and SCHIP Extension Act of 2007.

7. Payment of the sum set forth in paragraph 2 is subject to the approvals of all appropriate State officials in accordance with the provisions for indemnification under New York Public Officers Law Section 17. Plaintiff agrees to execute and deliver to counsel for defendants all necessary or appropriate vouchers and other documents requested with respect to such payment.

8. Payment of the amount referenced in paragraph 2 will be made within one hundred and twenty (120) days after the approval of this Stipulation of Settlement by the Court,

and receipt by defendants' counsel of a copy of the so-ordered stipulation along with any further documentation as required under paragraphs 13 and 14 hereof, unless the provisions of Executive Law § 632-a apply to plaintiff and the payment hereunder constitutes "funds of a convicted person" under the Son of Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

9. In the event the aforementioned approvals in paragraph 7 of all appropriate State officials in accordance with the provisions for indemnification under Public Officers' Law Section 17 are satisfied, but payment is not made within the 120 day or 150 day period set forth herein, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the 121st day after court approval or the 151st day after court approval if the provisions of Executive Law § 632-a apply to plaintiff.

10. Except for the payment set forth in paragraph 4, each party shall bear its own costs and fees relating to this proceeding, and all other costs and fees shall be hereby waived by the parties against each other.

11. Nothing contained herein shall constitute an admission by defendants Adam Steck and Matthew Rademacher, individually or in their official capacity, that they deprived plaintiff Joe Felder of any right, or of failing to perform any duty, under the Constitutions, Statutes, Rules, Regulations or other laws of the United States or the State of New York.

12. This Stipulation of Settlement and Dismissal, and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible in any other action or proceeding as evidence, or for any other purpose except in an action or proceeding to enforce this Stipulation of Settlement and Dismissal.

13. Plaintiff Joe Felder represents and warrants that he is not a Medicare recipient, has never been on Medicare or on Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next 30 months.

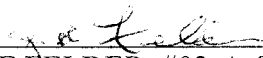
14. Plaintiff Joe Felder agrees that defendants Adam Steck and Matthew Rademacher, the Department of Corrections and Community Supervision, and the State of New York shall not be responsible for any liens of any kind which may have attached to the proceeds from this settlement, and further, that both plaintiff Joe Felder agrees that he will defend, indemnify and hold harmless defendants Adam Steck and Matthew Rademacher, the Department of Corrections and Community Supervision, its officers, agents and employees, and the State of New York for the satisfaction of any such liens.

15. Plaintiff Joe Felder agrees that defendants Adam Steck and Matthew Rademacher, the Department of Corrections and Community Supervision, and the State of New York shall not be responsible for any further liens of any kind which may have attached to the proceeds from this settlement, and further, that plaintiff Joe Felder agrees that he will defend, indemnify and hold harmless defendants Adam Steck and Matthew Rademacher, the Department of Corrections and Community Supervision, its officers, agents and employees, and the State of New York for the satisfaction of any such liens.

16. The recitals set forth above are material hereto and are incorporated herein by reference.

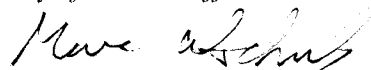
17. In confirmation of this agreement herein to settle and dismiss this action, plaintiff Joe Felder and the undersigned attorneys for the parties to this action set their signatures below.

Dated: Fallsburg, New York
~~February~~ 18, 2014
April 18, 2014


JOE FELDER, #02-A-0644
Plaintiff


Dated: Buffalo, New York
~~February~~ 14, 2014
April

Hurwitz & Fine, P.C.
Attorneys for Plaintiff

By: 
MARC A. SCHULZ, Esq.
1300 Liberty Building
Buffalo, NY 14202
716-849-8900
mas@hurwitzfine.com

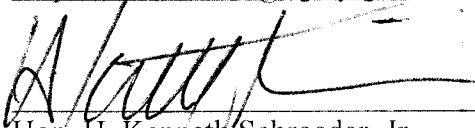
Dated: Buffalo, New York
~~February~~ 17, 2014
April

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Defendants
New York State Office of the Attorney General

By: 
STEPHANIE JOY CALHOUN
Assistant Attorney General, of Counsel
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202
(716) 853-8566
Stephanie.Calhoun@ag.ny.gov

SO ORDERED:

April 22, 2014


Hon. H. Kenneth Schroeder, Jr.
United States Magistrate Judge